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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/936,518 | 11/15/2001 | Ingo Gasser | 2001-1252A | 6150 |
| 513 | 7590 | 11/16/2004 | EXAMINER | |
| WENDEROTH, LIND & PONACK, L.L.P. 2033 K STREET N. W. SUITE 800 WASHINGTON, DC 20006-1021 | | | TRAN, HANH VAN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3637 | |

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/936,518 | GASSER, INGO | |
| | Examiner | Art Unit | |
| | Hanh V. Tran | 3637 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 11 August 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 18-40 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 18-40 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 8/11/2004.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 18, 21-29, 31-40 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Great Britain 2,245,158 to Tamura in view of USP 4,445,726 to Rock et al.

Tamura discloses a pull-out guide fitting for a drawer comprising all the elements recited in the above listed claims including a drawer track 7, a support track 3, rolling elements arranged between the tracks, a dampening device including a rotary damper component, a stop 22, a coupling attachment for coupling the drawer track and the support track 3, a control component, a rack having a toothed rack profile 5, a pinion for engaging the rack, a compression spring 20, a fluid damping device including a damping fluid medium *a*. The different being that Tamura

does not disclose a center track arranged between the drawer track and the support track, the dampening device being mounted on any one of the tracks, to dampen relative motion of “only” two tracks or all three tracks, and the stop being mounted on any one of the tracks.

Rock et al teaches the idea of providing a pull-out guide fitting for a drawer comprising a drawer track attached to a drawer, a support track attached to a body sidewall, a center track arranged between the drawer track and the support track, rolling elements arranged between the drawer track, the center track, and the support track in order to allow the drawer to be pulled out of the body of a piece of furniture over its entire length and facilitate the reinsertion of the drawer into the body of the furniture. Therefore, it would have been obvious to modify the structure of Tamura by providing the pull-out guide fitting with a center track arranged between the drawer track and the support track, rolling elements arranged between the drawer track, the center track, and the support track in order to allow the drawer to be pulled out of the body of a piece of furniture over its entire length and facilitate the reinsertion of the drawer into the body of the furniture, as taught by Rock et al, since both teach alternate conventional pull-out guide fitting structure, used for the same intended purpose, thereby providing structure as claimed. In regard to the dampening device being mounted on any one of the tracks, to dampen relative motion of “only” two tracks or all three tracks, and the stop being mounted on any one of the tracks, it would have been obvious to rearrange the dampening device and the stop of Tamura, as modified, such that the dampening device and the stop being mounted to any one of the tracks as claimed, and to dampen relative motion of “only” two tracks or all three tracks, since it is well within the level of one skill in the art to rearrange existing components from one location to another to achieve various combination of interaction between the components.

5. Claims 19-20 and 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tamura, as modified, as applied to claims 18 above, and further in view of EP 556,613 to Migliori.

Tamura, as modified, discloses all the elements as discussed above except for the dampening device comprises a hydraulic damping device a, a linear damping component including a cylinder and a piston.

Migliori discloses a rack and pinion pneumatic actuator with counter-pressure control and damping device in order to control the damping actions, in a controlled manner, in an extremely small space at the approaching end of each working stroke, allowing a low-down to stop and reverse the sliding movement of the rack and piston assemblies. Therefore, it would have been obvious to modify the structure of Tamura, as modified, by providing a rack and pinion pneumatic actuator with counter-pressure control and a linear damping component including a cylinder and a piston damping device in order to control the damping actions, in a controlled manner, in an extremely small space at the approaching end of each working stroke, allowing a low-down to stop and reverse the sliding movement of the rack and piston assemblies, as taught by Migliori, since both teach alternate conventional damping device, thereby providing structure as claimed.

Response to Arguments

6. Applicant's arguments filed 8/11/2004 have been fully considered but they are not persuasive.

7. In response to applicant's arguments against the references individually, on page 7, paragraph #1 of the above-noted amendment, that "neither the Tamura reference nor the Rock

‘726 reference discloses a damping device operable to dampen a relative motion between a center track and at least one of a drawer track and a support track”, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

8. In response to applicant's arguments on page 7, paragraph #4, “[T]he combination of references does not, however, suggest arranging a damping device so as to dampen a relative motion between a center track and a drawer track and/or between a center track and a support track”, but, at best, only suggest the damping unit being operable to dampen a relative motion between a drawer track and a support track, the examiner takes the position that Tamura, as modified by Rock ‘726 to provide a center track, teaches all the components recited in the above listed claims, and it is well within the level of one skill in the art to position the dampening device at different locations to dampen relative motion between various combinations of the tracks.

9. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

10. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Rock '726 teaches the idea of providing a center track in order to allow the drawer to be pulled out of the body of a piece of furniture over its entire length and to facilitate the reinsertion of the drawer into the body of the furniture.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (703) 308-6302. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HVT *HVT*
November 13, 2004

LANNA MAI
SUPERVISORY PATENT EXAMINER
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Lanna Mai